IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1642 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALAJI HATHIJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner

Mr.P.K.Shukla, learned A.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. This Special Civil Application is directed against the order dated 8.5.98 passed by the District Development Officer,. Banaskantha,Palanpur whereby the petitioner was removed from the office of the Upa-Sarpanch of Gram Panchayat, Gangva, Taluka Danta, District Banaskantha at Palanpur and the order dt.25.1.99

passed by the Addl. Development Commissioner in Appeal.

2. This Special Civil Application was filed in the Court on 4.3.99 against the aforesaid orders. The petitioner's case is that he was a member of the said Panchayat prior to 1990 but he was not a member of the said Panchayat and did not hold any office in the said village Panchayat Gangva from 1990 to 1995. The petitioner has stated that he is a supporter of Congress (I) party and in order to see that the supporters of the party loses its control over the Panchayat, a show cause notice was issued at the instance of the members of the opposition party by the District Development Officer purporting to exercise his powers under S.57 of the Gujarat Panchayats Act, 1993. It appears that the petitioner may not have been a member of the Panchayat from 1990 to 1995 but he was a member of the Panchayat prior to 1990 and it also appears from the impugned order Annexure 'D' dt.8.5.98 passed by the District Development Officer, Banaskantha at Palanpur that the petitioner was elected as Upa-Sarpanch of the said Gram Panchayat on 10.7.95 and was holding the office of the Upa-Sarpanch of the said Gram Panchayat since 10.7.95.

3. On 31.1.98 a show cause notice was issued to the petitioner by the District Development Officer calling upon him to show cause as to why he should not be removed from the office of the Upa-Sarpanch under Sec.57(1) of the Gujarat Panchayats Act, 1993 and by the very same show cause notice, he was also asked to be present before the concerned District Development Officer on 16.2.98 for personal hearing. The gist of the allegations levelled against the petitioner in the said show cause notice is as under:-

"I. That the petitioner was holding the post of Upa-Sarpanch at present and in the past also the said post was held by you, (Petitioner). There are 3 plots opposite Village Panchayat Office having No.1, 2 and 3, admeasuring 40' x 18' each. The total measurement of the said plot is 8179 Sq.Ft. On this plot, the encroachment is made by you on 1.4.1992 by planting trees and also by putting fence.

II. The petitioner did not remove the said encroachment on his own though he was there as Upa-Sarpanch in the Body twice and it has created an impression amongst the people that there is no enforcement of law by Panchayat Administration.

III. Despite you being a Member of the Panchayat,

you are not paying the rent of the said encroachment and, therefore, financial loss is caused to the Panchayat.

IV. The Panchayat could not take decision to have Veterinary Hospital at the disputed place as you did not remove the encroachment despite you being a member of the Panchayat.

V. The petitioner got the Resolution No.3 dated 17.11.1997 passed in the meeting held by Gram Panchayat in connection with the land in question."

4. According to the petitioner, the show cause notice was served upon him sometime in second week of Feb.1998. The case of the petitioner is that he filed a reply dt.4.5.98 to the show cause notice denying the allegations and stating therein that the alleged incident of making encroachment was of 1992 and at that time he was not a Member of the Panchayat. It was further stated in the reply that the petitioner was having his own plot near the Panchayat Office. Out of the three plots, in one of the plots, there is a Flour Mill and two plots are open to all the sides and there is no fencing or wall constructed by the petitioner and hence there is no question of encroachment or making any fencing in the Panchayat Plot. He has further submitted that the trees in this land are natural and because of the flow of the water towards the Panchayat office time and again the Panchayat itself is making an obstruction wall. The petitioner says that he has tendered a Sanad of the land in question wherein the disputed land is shown with fencing of the Panchayat. The District Development Officer i.e. respondent No.2 herein having heard the petitioner passed the order dt.8.5.98 removing the petitioner from the office of the Upa-Sarpanch. Against this order dt.8.5.98 the petitioner preferred an Appeal under S.57(3) of the Gujarat Panchayats Act, 1993. The said Appeal was heard by the Addl. Development Commissioner - respondent No.1 herein and he dismissed the Appeal by his order dt.25.1.99. The orders passed by the District Development Officer and the Addl. Development Commissioner have been challenged by the petitioner by saying that in the Plan, which was prepared way back on 25.7.76, the fencing of the Panchayat had been shown and as such there is no question of raising any fencing by the Petitioner, that only because the Petitioner is a Member of Congress (I) party his rival had tried to see that the petitioner is removed by hook or crook and, therefore, arbitrary and illegal action has been taken against the petitioner, that the impugned

action under S.57 could not be taken against the petitioner because the petitioner as Upa-Sarpanch could be removed only on the ground of guilt or misconduct in discharge of his duties and according to the petitioner none of the ingredients enumerated in this Section are attributable to the petitioner inasmuch as neither he was a member of the Panchayat nor Upa-Sarpanch from 1990 to 1995 at the relevant point of time i.e. on 1.4.92 when the encroachment is said to have been made, that the points raised by the petitioner had not been considered by the appellate authority.

5. On 30.4.99 notice returnable on 30.6.99 was issued in this case and thereafter Rule was issued on 4.10.99 and the affidavit in reply dt.4.10.99 was filed in which the allegations were denied and the copies of the Taluka Development Officer's report dt.20.10.97 and 29.11.97 were filed in Annexure 'I' and the Encroachment Register of the Gram Panchayat with a Panchanama and Map etc. have also been filed to show that the petitioner had made the encroachment of the land admeasuring 8179 sq.mt. on 1.4.92. It has been stated that the orders passed were legal and proper.

6. The matter was heard for some time on 7.3.2000. However, the learned counsel for the petitioner having argued the matter for some time wanted time to produce some more documents and, therefore, the matter was adjourned to 16.3.2000 and on 16.3.2000 on the joint prayer of both the sides it was again adjourned for today. No one has appeared on behalf of the petitioner today and no documents have been filed. The learned A.G.P. invited the attention of the Court that in this case Civil Application No.1808/2000 had also been filed by the petitioner on 3.3.2000. Therefore, the papers of this Civil Application were called from the Registry. It appears from the contents of this Civil Application that through this Civil Application the petitioner seeks to insert some more grounds of challenge by way of amendment. This amendment is not opposed by the learned A.G.P. Mr.P.K.Shukla and, therefore, the amendment as prayed for in this Civil Application is allowed.

7. I have considered the pleadings and submissions of both the sides. So far as the petitioner's grievance that he was not holding the office of the Panchayat on the date of alleged encroachment i.e.1.4.92 and therefore there is no question of any misconduct by the petitioner in discharge of his duties and as such he could not be removed under S.57(1) of the Gujarat Panchayats Act, 1993 on the ground that he had misused his office or that he

had misconducted in discharge of his duties is concerned, it may be straightaway observed that no doubt the petitioner may not have been holding any office in the Panchayat on 1.4.92 and he may be right in his submission that he was a Member of the Panchayat prior to 1990 and was not a member of the Panchayat at the relevant time in the year 1992 and even as per the show cause notice it is found that he was elected as a Upa-Sarpanch on 10.7.95, that would not absolve the petitioner from being liable to action under S.57(1) for the simple reason that S.57(1) of the Gujarat Panchayats Act takes within its sweep any disgraceful conduct. In this view of the matter, whether it is a case of being guilty of misconduct in discharge of duties or abuse of power or making persistent default in the performance of his duties and functions under the Act or becoming incapable of performing his duties and functions under the Act or not, the fact remains that making of encroachment at any point of time and not the fact as to whether at that very point of time such Srapanch or Upa-Sarpanch is a Member of the Panchayat or not, the very factum of making unauthorised encroachment by him at any point of time is sufficient to make out a case of disgraceful conduct on his part and, therefore, this ground, as has been raised in the body of the petition, fails and this court finds that if the petitioner had made any unauthorised encroachment at any point of time, even the point of time when he was not a member of the Panchayat, would constitute a case of disgraceful conduct and, therefore, if it is found that the petitioner had made any unauthorised encroachment on the Panchayat land or had tried to grab this land on 1.4.92, the District Development Officer was within its right to initiate action against the petitioner for removal from the office of Upa-Sarpanch under S.57(1) of the Gujarat Panchayats Act, 1993.

8. So far as the allegation as to whether the petitioner had in fact been guilty of such disgraceful conduct or not is concerned, firstly it is not for this court to enter into the sufficiency of the material on this aspect of the matter. The fact remains that the petitioner was given a detailed show cause notice with allegations set out therein. He had filed the reply. Such reply had been taken into consideration and, thereafter, the District Development Officer came to the conclusion that the petitioner had made unauthorised encroachment as was alleged in the show cause notice and I do not find any basis to interfere with the findings arrived at by the District Development Officer. The District Development Officer has sifted the petitioner's

reply against the allegations set out in the show cause notice and after considering the reply and the documents enclosed therewith by the petitioner, has found that the petitioner had made the unauthorised encroachment. The District Development Officer has passed a detailed order and had also recorded that on more than one dates time was granted to the petitioner for the purpose of hearing on the reply to the show cause notice in these proceedings under S.57 and after considering the reply has recorded that unauthorised encroachment has been registered with the Panchayat on 1.4.92 and as per the map, which was prepared on the site on 20.10.97, the unauthorised encroachment had been made by the petitioner, nay, it has also been recorded that he had pressurised the other Members of the Panchayat to pass the Resolution dt.19.11.97, had obstructed the proceedings of the Gram Panchayat and got the Resolution passed in his favour merely because of the brute majority in his favour. Having considered all these aspects the order of removal was passed.

9. The Addl. Development Commissioner has also passed the order dt.25.1.99 after hearing dated 14.12.98 and in this order he has taken into consideration all the grounds, which were raised by the petitioner and has found in no uncertain terms that the petitioner had encroached upon 8179 sq.ft. of the Panchayat land and also that he had obstructed the Panchayat proceedings when the question of this unauthorised encroachment was taken up and had not removed the unauthorised encroachment even after being elected as a Upa-Sarpanch. The facts of this case in entirety coupled with the support of the documents, which have been taken into consideration, make it very clear that the finding arrived at by the District Development Officer and the Addl. Development Commissioner in Appeal do not warrant any interference and on the proved documents and material, it is certainly a case of disgraceful conduct on the part of the petitioner, which admits of no exception and the action, which has been taken against the petitioner, was fully justified and the orders, as have been passed, do not suffer from any infirmity whatsoever.

10. To meet the ground, as has been sought to be raised through the amendment Application, which has been allowed today i.e. Civil Application No.1808/2000. learned A.G.P. has brought to the notice of this Court the Government Notification dt.26.7.94 to which reference has been made by the petitioner to argue that the Competent Authority was the District Panchayat and not

the District Development Officer. He submitted that it has been subsequently substituted by the words "District Development Officer" for "District Panchayat" by the notification dt.15.5.95 and, therefore, District Development Officer was the competent authority for the purpose of initiating action and ordering the removal of the petitioner as Upa-Sarpanch under S.57(1). This Notification under the Gujarat Panchayats Act, 1953 under Sec.2(4) as it appears at page 347 of 1995 Gujarat State Current Statutes is reproduced as under:-

"214. The Gujarat Panchayats Act, 1993-Sec.2(4)Figures and words against S.No.11 of the Sch. appended to the Noti.dated 26.7.94- Substituted.

In exercise of the powers conferred under clause (4) of Section 2 of the Gujarat Panchayats Act, 1993 (Guj.18 of 1993), the Government of Gujarat hereby amends Government Notification Panchayats and Rural Housing Department No.KP/193 of 1994/DEL-1094/1247(ii)-J, dated the 26th July, 1994 as follows, namely:-

In the schedule appended to the said notification-

For the figures and the words appearing against serial No.11, the following shall be substituted, namely:-

1	2	3	4
11.	57(1) and 57(2)	Removal from office of a Village Panchayat	District Development Officer.

Note:- See 1994 Gujarat State Current Statutes,Part II (Gujarat Section) at page 593, Head Note No.274 for the above referred notification dated 26-7-94.

(Noti.No.KP/91 of 1995/MIS-2691/1079-J. dt.15.5.95 - Guj.Govt.Gaz., Exty., Pt.I-A, No.107, dt.15.5.95, P.107-1.)"

11. It is, therefore, clear that the aforesaid ground of the petitioner that the action under S.57(1) could not

have been initiated by the District Development Officer and the District Development Officer could not pass the order against the petitioner for his removal has no basis and this ground also fails.

12. The adjudication of the petitioner's grievances, as aforesaid, need not detain this Court further from deciding this petition against the petitioner,merely on the bald allegation that he has been removed because he is a supporter of Congress (I) party, no material whatsoever has been placed on record in support of this bald allegation and such vague and wild allegations can be levelled at any time as and when a person is removed. Unless and until any material is placed on record in support of such allegations of malafide, this Court cannot proceed to strike down the action or the order on such bald plea. This ground appears to be wholly misconceived, rather ill conceived and the same is hereby rejected.

13. There is no merit in this Special Civil Application. The same is hereby dismissed. Rule is hereby discharged. No order as to costs.

(M.R.Calla,J)